



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 11894673

Date: JUNE 9, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a dentist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
  - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of dentistry, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a "plan . . . to work with a health care facility to provide expert advice and treatment to patients. . . . I can perform and consult on complex dental surgery procedures." The Petitioner also provided a bullet-point list of what the endeavor would accomplish, as follows:

- Fill a position as a [d]ental [s]urgeon that is vacant due to a large demand for dentist [*sic*] but a lack of candidates;
- Provide patients with a proper diagnosis;
- Educate other dental surgeons on beneficial techniques and treatments; and
- Monitor and manage other dentist [*sic*], dental hygienist [*sic*], and others involved in the dental medicine field.

The Petitioner also noted that her "work in the field of dental medicine has played an important role in the education of millions of Brazilian students on the importance of 'Oral Health.'" However, the Petitioner did not initially state that the endeavor would entail presenting oral health lessons to large, public audiences.<sup>3</sup> In response to the Director's request for evidence (RFE), the Petitioner added:

[O]ral health is critical to a person's health, and the public needs to be aware of the high importance of good oral health. This is part of my endeavor in the United States. This can be done through seminars, partnerships with organizations and schools, which can then be streamed online, and viewed by a large number of people.

We note that the Petitioner did not initially describe the endeavor as presenting oral health lessons to large, public audiences through seminars and partnerships with organizations and schools, and streaming recordings of those presentations online. Instead, the Petitioner stated she would provide patients with a proper diagnosis of their particular oral health issue and educate *other dental surgeons* on beneficial techniques and treatments. Therefore, including those large, public presentations as part of the endeavor in response to the RFE presents a set of facts that did not exist at the time of filing the petition. A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1); see also *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> Although we do not discuss each document in the record for brevity, we have reviewed the record in its entirety.

changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that “[t]he record does not demonstrate that [the Petitioner’s] dental practice will offer benefits that extend beyond her immediate employment or employer to impact the field of dentistry more broadly.”

On appeal, the Petitioner summarizes her expertise in dentistry and her prior career accomplishments in Brazil. The Petitioner also asserts that she will “work in an industry that already has a substantial impact on the U.S. economy and societal welfare.” The Petitioner also cites reports of a shortage of both capable dental workers and access to affordable dental care in the United States, in general. The Petitioner reiterates that oral health may be related to other health problems, such as cardiovascular disease. The Petitioner asserts on appeal that the “endeavor is national in scope, and will have broad implications in the healthcare field, as her dental activities relate to a matter of national importance and impact, particularly because of the ripple effects upon communities and citizens in the United States.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The proposed endeavor of working in a dental facility to provide expert advice and treatment to patients benefits the patients of that facility; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner’s unspecified employer, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. Likewise, the record does not establish how filling a vacant dental surgeon position, providing patients with proper diagnoses, educating other dental surgeons, and monitoring other dental workers rises to the level of broader implications within the field, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner’s statements on appeal regarding her expertise and prior career accomplishments in Brazil do not address how the proposed endeavor in the United States has broader implications beyond her immediate employer and patients. Moreover, the Petitioner’s focus on appeal on the importance of the dental industry, and generalized shortages, do not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.